No. 16189. ✓ 16190 ✓

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MRS. GRACE CARRIGAN,

Appellant,

vs.

CALIFORNIA STATE LEGISLATURE and INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and ZENITH NATIONAL INSURANCE COMPANY and DR. F. K. AMERONGEN,

Appellees.

APPELLEES' BRIEF.

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APPELLEES' BRIEF.

Statement of Case.

On May 22, 1958, appellant, appearing *in propria persona,* filed a 188-page complaint in the above-entitled action in the United States District Court, Southern District of California, Central Division, naming the California State Legislature, the Industrial Accident Commission of the State of California, Zenith National Insurance Company and Dr. F. K. Amerongen as defendants. On July 14, 1958, appellant filed a document which she denominated "Application for Injunction Against California State Legislature and Industrial Accident Commission of the State of California and for Immediate Payment of All Equitable Relief Prayed for in the Complaint in This Action." The several appellees appeared and moved for dismissal of said complaint. The motions to dismiss the complaint were granted in a minute order entered by the

District Court on July 21, 1958. The minute order states as grounds therefor:

> "1. That the complaint fails to comply with Rule 8 (a) (2) of the Federal Rules of Civil Procedure which provides that plaintiff shall file a short and plain statement of the claim showing that the pleader is entitled to relief.
>
> "2. That the complaint does not comply with Rule 8 (a) (1) of the Federal Rules of Civil Procedure in that it does not contain a short and plain statement of the grounds upon which the court's jurisdiction depends.
>
> "3. That Mrs. Grace Carrigan has no standing in court as the wife of the injured person; and if she is attempting to represent her husband as an attorney or otherwise, she lacks standing before the court."

The District Court in said minute order further held that it had no jurisdiction and that the application for injunctive relief and for a three-judge court must be denied.

On August 5, 1958, appellant filed the instant appeal in a document entitled "Application to Appeal in a Special Manner." It appears that the appeal is taken from the order of the District Court dismissing the complaint without prejudice, and from the denial of the application for injunctive relief and for a three-judge court.

Statement of Facts.

The complaint is unintelligible, ambiguous, and uncertain but it appears that the legally pertinent facts as set forth in the complaint are as follows:

In the year 1956 appellant's husband, Mr. Milo Carrigan, earned $5,799.30 as a hodcarrier. On May 27, 1957, he sustained an industrial injury. [Complaint p. 21.]

Appellee Zenith National Insurance Company paid Workmen's Compensation benefits in the amount of $40 per week, and furnished medical care for a period of time. [Complaint p. 21.] Appellee Dr. Amerongen was one of the treating physicians authorized by Zenith National Insurance Company to attend Mr. Carrigan. [Complaint p. 76.]

Certain disputes arose between the insurance company and appellant regarding medical treatments and the amount of the benefits.

The appellant, Mrs. Carrigan, contacted the attorneys for the Industrial Accident Commission and was informed that Mr. Carrigan should make application to the Commission to settle the dispute. [Complaint p. 95.] Mr. Carrigan has never filed an application with the Commission.

Statement of Issues.

Briefly summarized, appellant prays that the District Court declare unconstitutional and order deleted certain sections of the California Labor Code prescribing methods for computing benefits under the Workmen's Compensation Act, and that the District Court order the California State Legislature to enact certain legislation specified by appellant. [Complaint pp. 183-185.]

Appellant also prays for damages as follows:

1. $10,000 from the State Legislature for having maintained a deficient, inequitable and fraudulent law and for having permitted appellees, Zenith National Insurance Company and Dr. Amerongen, to function under said law.

2. $10,000 from the Industrial Accident Commission for having functioned under, enforced and upheld said deficient and inequitable and fraudulent law.

3. $10,000 from appellee, Zenith National Insurance Company for not paying equitable compensation to appellant's injured husband and for ceasing, in a fraudulent manner, all benefits.

4. $10,000 from appellee, Dr. Amerongen, for having been a party to the ceasing of the benefits.

5. Special damages of $20,000 from Mr. S. W. Macdonald, chairman of the Industrial Accident Commission, for the closing sentence in his letter of January 8, 1958,, which was sent to appellant and her husband, which was cruel, inhuman and mocking.[1]

The legal issues may be framed as follows:

1. whether the complaint was properly dismissed without prejudice by the District Court, and more particularly, whether the District Court properly held that the appellant failed to file a short and plain statement of the claim showing that she was entitled to relief; that the complaint did not contain a short and plain statement of the grounds upon which the Court's jurisdiction depends; that appellant, Mrs. Carrigan, has no standing to sue as the wife of the injured person;

2. whether a single district judge may dismiss an application for injunction where it appears that the court has no jurisdiction.

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[1]"I regret I am unable to be of further assistance to you, and trust that your husband's health will improve as much as possible." [Complaint p. 154.]

ARGUMENT.

I.

Appellant's Claim for Relief Did Not Contain a Short and Plain Statement of the Claim Showing That the Pleader Was Entitled to Relief.

Rule 8(a)(2) of the Federal Rules of Civil Procedure provides in part that:

> "A pleading which sets forth a claim for relief, . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief, . . ."

A complaint must contain a statement of facts showing the jurisdiction of the court, ownership of a right by plaintiff, violation of that right by the defendant, injury resulting to plaintiff by such violation, and justification for equitable relief where that is sought.

> *Patten v. Dennis* (C. C. A. 9th, 1943), 134 F. 2d 137, 138.

Appellant's complaint consists of 188 pages of vague, ambiguous and unintelligible statements, setting forth in detail her conversations and correspondence with attorneys from the Industrial Accident Commission, the insurance company, and the doctors. Appellant's statements are neither short nor plain, and under no conceivable theory does she state a claim against any of the appellees.

The claim, if any, arises under the Workmen's Compensation Act (Cal. Labor Code, Div. IV) and belongs to appellant's husband, the injured party. His exclusive remedy is to file an application before the Industrial Acci-

dent Commission. California Labor Code, Section 5300, provides in part that:

> "All the following proceedings shall be instituted before the commission and not elsewhere, except as otherwise provided in Division 4.
>
> "(a) For the recovery of compensation, or concerning any right or liability arising out of or incidental thereto.
>
> "(b) For the enforcement against the employer or an insurer of any liability for compensation imposed upon him by this division in favor of the injured employee, his dependents, or any third person. . . ."

II.

The Complaint Does Not Contain a Short and Plain Statement of the Grounds Upon Which the Court's Jurisdiction Depends.

Rule 8(a)(1) of the Federal Rules of Civil Procedure provides that a claim shall contain a short and plain statement of the grounds upon which the court's jurisdiction depends.

The jurisdiction of federal courts is limited to that conferred by the Federal Constitution and statutes, so that facts disclosing jurisdiction must affirmatively appear upon the records.

> *Patton v. Baltimore & O. R. Co.* (C. C. A. 3d, 1952), 197 F. 2d 732, 743.

Federal jurisdiction does not arise merely because an averment is made as to the existence of a constitutional question. Allegations that defendants' acts denied plain-

tiff benefits and rights granted him by the Fourteenth Amendment are mere conclusions.

Swank v. Patterson (C. C. A. 9th, 1943), 139 F. 2d 145, 146.

Appellant apparently contends that certain portions of the Workmen's Compensation Law of California are invalid on the theory that under this law her husband would not be able to receive the same amount of money in benefits which he was actually earning as a hodcarrier prior to the injury, and under the theory that the California Legislature and the Industrial Accident Commission "allowed" the insurance company and the doctor to cease providing medical benefits, and hence that she and her husband were deprived of certain property rights without due process of law and in violation of the Fourteenth Amendent to the Constitution of the United States.

The California State Legislature by enacting the Workmen's Compensation Act has created certain rights which did not exist at common law. If Mrs. Carrigan is dissatisfied with these rights her recourse is to the Legislature to change the statutes. There is no issue raised by the pleadings that appellant has been deprived of any rights. Appellant is entitled to enforce only those rights created by statute and in the manner prescribed by statute.

It is a well-settled rule of judicial administration that no one is entitled to judicial relief until he has exhausted all prescribed applicable administrative remedies.

The Industrial Accident Commission has complete control of controversies between employer and employees

arising under the Act, subject to the rules and regulations provided by the legislature, and resort to the courts may take place only in accordance with such rules and regulations.

Bartlett Hayward Co. v. I. A. C., 203 Cal. 522, 535.

Mr. Carrigan has never filed an application with the Industrial Accident Commission to determine the disputes alleged in the complaint.

There is no allegation in the complaint that the law in question has been applied to the appellant to her detriment and there is no justiciable controversy where the object of an action is merely to determine the constitutional validity of legislation.

Muskrat v. United States, 219 U. S. 346, 31 S. Ct. 250, 255.

It is clear that the judgment prayed for could not possibly be executed and would not terminate the action, and hence the Federal court should not entertain the action.

Muskrat v. United States, 219 U. S. 346, 31 S. Ct. 250;

Angell v. Schram (C. C. A. 6th, 1940), 109 F. 2d 380, 382;

Duart Mfg. Co. v. Philad Co., 31 Fed. Supp. 548.

III.

Appellant Has No Standing to Sue.

Mrs. Carrigan, the appellant in the above-entitled action, is attempting to question the validity of certain portions of the Workmen's Compensation Act. It is

clear from the complaint that her husband sustained the industrial injury and that any rights which he may have under the Workmen's Compensation Act should be asserted by him in the proper forum.

Mrs. Carrigan may not in any event question the validity of a statute when her rights are not affected thereby and when the law is not about to be or has not been applied to her disadvantage.

Premier-Pabst Sales Co. v. Grosscup, 56 S. Ct. 754, 298 U. S. 226;

Dallas Joint Stock and Land Bank v. Davis, 83 F. 2d 322, 323.

IV.

Single District Judge Properly Dismissed the Complaint and Application for Injunctive Relief.

Single district judges may dismiss a complaint for want of jurisdiction where question of the unconstitutionality of a statute presented as a ground for an injunction lacks the necessary substance and no other ground of jurisdiction appears.

Ex parte Poresky, 54 S. Ct. 3, 4, 290 U. S. 30;

Jacobs v. Tawes, 151 Fed. Supp. 770, 771 (clearly appeared on face of complaint that the court did not have jurisdiction).

Subject to review, a trial judge may determine whether a case requires a statutory three-judge court.

J. B. Schermerhorn, Inc. v. Holloman, 74 F. 2d 265, 266, cert. den. 55 S. Ct. 548, 294 U. S. 721.

Conclusion.

For the foregoing reasons and authorities, it is submitted that the District Court properly dismissed the complaint in the above-entitled action, and it is respectfully requested that the judgment of dismissal be affirmed.

Respectfully submitted,

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